

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

KEVIN MADISON,

Plaintiff,

v.

Case # 19-CV-6554-FPG-MJP
DECISION AND ORDER

SUPERINTENDENT CROWLEY, *et al.*,

Defendants.

Presently before the Court is the September 15, 2023 Report and Recommendation (“R&R”) of Magistrate Judge Mark W. Pedersen in this case, ECF No. 60, pursuant to Western District of New York Local Rule of Civil Procedure 41(b) and Local Rule of Civil Procedure 5.2(d). ECF No. 57.

Plaintiff commenced this action on July 24, 2019. ECF No. 1. However, beginning on December 20, 2022, Plaintiff has failed to timely respond to correspondence from Magistrate Judge Pedersen and provide Defendant with documents that are necessary for filing dispositive motions. ECF No. 50. Plaintiff failed to update the Court of his new address when he moved, ECF No. 54, and after the Court was able to locate Plaintiff, he continued to ignore Orders issued by the Court. Specifically, Plaintiff failed to timely respond to the March 20, 2023 Order to show cause, ECF No. 56, as well as the May 5, 2023 Order to show cause. ECF No. 57. As of September 15, 2023, Plaintiff still has not responded to either Order. Accordingly, Magistrate Judge Pedersen issued the present R&R recommending dismissal of the action pursuant to Federal Rule of Civil Procedure 41(b). *See* ECF No. 60.

In reviewing a report and recommendation, this Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1)(C). When no objections are filed, this Court is not required to conduct a *de novo* review of Magistrate Judge Pedersen’s R&R. *Thomas v. Arn*, 474 U.S. 140, 150 (1985) (“It does not

appear that Congress intended to require district court review of a magistrate's factual or legal conclusions, under a *de novo* or any other standard, when neither party objects to those findings."); *see also United States v. Male Juvenile*, 121 F.3d 34, 38 (2d Cir. 1997) ("We have adopted the rule that failure to object timely to a magistrate judge's report may operate as a waiver of any further judicial review of the decision, as long as the parties receive clear notice of the consequences of their failure to object."). Rather, the Court reviews a magistrate judge's report and recommendation only for clear error. *See Batista v. Walker*, No. 94 CIV. 2826, 1995 WL 453299, at *1 (S.D.N.Y. July 31, 1995) (Sotomayor, District Judge) ("I am permitted "to adopt those sections of [a magistrate judge's] report to which no specific objection is made, so long as those sections are not facially erroneous.") (internal quotations omitted).

Magistrate Judge Pedersen reminded the parties of the importance of filing timely objections, stating that "Failure to file objections within the specified time or to request an extension of such time waives the right to appeal the District Court's Order." ECF No. 60 at 7. Parties were given 14 days to object to the R&R, and today marks the 18th day since the filing of the R&R and neither part has objected. The Court has therefore reviewed the R&R for clear error.

After reviewing Magistrate Judge Pedersen's R&R for clear error, the Court agrees with its reasoning and adopts the recommendation in its entirety. For the reasons set forth therein, IT IS HEREBY ORDERED THAT the Plaintiff's case be DISMISSED WITH PREJUDICE. The Clerk of the Court is directed to dismiss the action and close this case.

IT IS SO ORDERED

DATED: October 3, 2023,
Rochester, New York



HON. FRANK P. GERACI, JR.
United States District Judge
Western District of New York